



May 25, 2000

Ms. Nora Bender
Acting Open Records Coordinator
Texas Department of Mental
Health and Mental Retardation
P.O. Box 12668
Austin, Texas 78711-2668

OR2000-2066

Dear Ms. Bender:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135557.

The Texas Department of Mental Health and Mental Retardation (the "department") received a request for information submitted by Magellen Behavioral Health of Texas, Inc. ("Magellen") to the department in regard to the NorthSTAR program, and the department's responses to Magellen's submission. While the department does not raise any objections to releasing the requested information, it has notified Magellen of the request, pursuant to section 552.305 of the Government Code, in order to provide Magellen an opportunity to raise exceptions from required public disclosure on its own behalf.¹ Magellen has responded by stating that it has no objection to disclosure of the requested information.² Therefore, as

¹Section 552.305(d) provides: "If release of a person's proprietary information may be subject to exception under Section 552.101, 552.110, 552.113, or 552.131, the governmental body that requests an attorney general decision under Section 552.301 shall make a good faith attempt to notify that person of the request for the attorney general decision."

²Magellen actually raised a conditional objection to release. At the time Magellen received notice of request for information, Magellen had its own request for information pending while the department sought a decision from this office. Magellen's request for information was similar to the one at issue here, only it pertained to information submitted by a different company, ValueOptions, which happens to be the requestor here. Magellen's response to the current request was that should its own request for information be denied, it would raise whatever objections to the current request for information that ValueOptions had raised in response to Magellen's request for information. (Although we question this method of raising objections, we need not address its propriety here.) This office has since ordered release of the information Magellen sought in its request. See Open Records Letter No. 2000-1674 (2000). Accordingly, we understand Magellen to have no current objections to release of the information that ValueOptions has requested.

there are no objections to disclosure, the department must release the requested information to the extent that it is not confidential by law.³

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

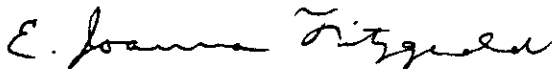
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

³When a governmental body requests an attorney general decision in regard to a request for information, it must submit the information at issue to this office. Gov't Code § 552.301. This is true even when the governmental body does not object on its own behalf to release of the information. *See id.* In this case, Magellen did not ultimately object to release, and therefore, the department's failure to submit the requested documents to this office was relatively harmless. However, we warn the department that in the future, if a third party were to object to release of requested documents, and the department failed to provide the documents to this office, we would be forced to order release of the documents even if they contained confidential information. *See* Gov't Code § 552.302; *see also* Gov't Code § 552.351 (providing criminal sanctions against a person who distributes confidential information).

body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, reading "E. Joanna Fitzgerald".

E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF\nc

Ref: ID# 135557

cc: Ms. Carole Matyas
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